IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13315 of 2006
Date of decision:30.11.2006

Charan Pal Singh

....Petitioner

versus

The Commissioner of Income Tax, Bathinda and another

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. KL Goyal, Advocate, for the assessee.
Mr. Yogesh Putney, Advocate, for the revenue.

JUDGMENT:

This petition seeks quashing of order dated 8.6.2006, Annexure P.13, passed by the Commissioner of Income Tax, Bathinda transferring the file of the petitioner-assessee from the file of Assessing Authority, Ferozepur to the file of Assessing Authority, Baroda under Section 127 of the Income Tax Act, 1961 (for short, 'the Act').

Case of the petitioner is that he is resident of Ferozepur and is living at Chandigarh. He is director of M/s. Jay Bee Distributors (P) Limited (JBDPL) and is also partner in M/s. Shubh Distributors, who are both engaged in the distribution of medicines. JBDPL is C&F agent of M/s. Comed Chemicals Limited, Baroda (for short, 'the Baroda Company') and is looking after distribution of medicines in Punjab, Haryana, Himachal Pradesh and Chandigarh but there is no intermingling or interlacing of funds between the two companies. On 9.9.2004, business premises of the Baroda Company was searched. The business premises of M/s. JBDPL and residence of the petitioner were surveyed from where nothing incriminating was found. The petitioner received a show cause notice dated 31.5.2006 as to why his case be not tagged with the Baroda Company to which the

petitioner replied that he being merely a Director of a company which was distributor of the Baroda Company, there was no ground for transfer of his file to Baroda which is 1000 kms. away from his normal place of residence and when the petitioner had no business concern at Baroda. Inspite of this, order of transfer has been passed relying on Board's instruction No.5/2001 dated 20.9.2001 without a speaking order and in a mechanical manner.

In the reply filed, stand taken is that the company of which the petitioner was a director, was an agent of the Baroda Company, one of the directors of the Baroda Company was also director of the company of which the petitioner is a director. There was nexus between the Baroda Company and the company of which the petitioner was a director. Certain documents were impounded for investigation during survey and it was on account of centralization of cases for coordinated investigation, the case of the petitioner was transferred under section 127 of the Act.

Order of transfer is extracted below:-

> "In exercise of the powers conferred by sub-section (2) (a) of Section 127 of the Income tax Act, 1961 (43 of 1961) and all other powers enabling me in this behalf, I, the Commissioner of Income Tax, Bathinda, hereby transfer with effect from 8.6.2006, the cases particulars of which are mentioned in column 2 and column 3 of the Schedule below from the Assessing Authority mentioned in column 4 to the Assessing Officer mentioned in column 5 of the said schedule. The cases are transferred in view of Board's instructions No.5/2001 issued under No.225/95/2001-ITA-II dated 20.9.2001 after providing opportunity to the concerned assessee and considering their replies."

Vide our order dated 22.9.2006, we gave liberty to the respondents to pass a supplementary order giving further reasons if necessary, without prejudice to rights and contentions of the parties. The supplementary reasons given are as under:-

> "Search and seizure action under section 132 were conducted on the business premises of M/s Comed Chemicals Limited, Baroda and residential premises of the Directors of this group. The company and the Directors falling under the jurisdiction of this charge

> have substantial interest in the Baroda Group company, having one common Director. Further, M/s Jay Bee Distributors (P) Limited Ferozepur Cantt., having business premises at Chandigarh was also covered by conducting a survey under section 133A of the IT Act, 1961, alongwith the search conducted in the Comed group of cases. Certain documents/CDs were impounded during the course of survey. As such M/s Jay Bee Distributors (P) Limited, Ferozepur Cantt., has substantial business interest with the Comed group of cases, Baroda alongwith its Director. Therefore, centralization of these cases is vital from the view point of coordinated investigation in the group to protect the interest of revenue. In pursuant to any evidence found in search and seizure/survey operations in the aforesaid group. This requires investigation at one centralised office."

Learned counsel for the petitioner submitted that the impugned order was void as no reasons were given and view-point of the petitioner was not considered. The impugned order did not show application of mind to the objection of the petitioner and the petitioner in his individual capacity had no concern with the Baroda Company so as to justify transfer of his assessment file. Reliance has been placed on judgments of the Hon'ble Supreme Court in **Ajantha Industries and others v. Central Board of Direct Taxes and others,** (1976) 102 ITR 281 **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and Others,** AIR 1978 SC 851and judgment of this Court in **Rajesh Mahajan and others v. CIT,** (2002) 257 ITR 577.

Learned counsel for the revenue opposed the submissions made and submitted that the impugned order itself carried the reasons, namely, for coordinate investigation in the group of cases having inter-connection to protect the interest of the revenue. Circular of the Board requiring centralization of cases having inter-connection was referred to and relied upon. It was also recorded therein that the assessee had been provided opportunity and reply filed by the assessee has been considered. The judgments relied upon were, thus, distinguishable. It was submitted that the reason was not irrelevant as the petitioner was director of JBDPL of which one of the directors was also director of M/s Comed Chemicals Limited and, thus, there was nexus between the two assessees. Reliance was also placed

on judgments in **Shri Rishikul Vidyapeeth v. UOI and others,** (1982) 136 ITR 139 (Raj.), **General Exporters v. CIT and another,** (2000) 241 ITR 845 (Mad.), **One-up Shares and Stock Brokers Pvt. Limited v. Singh (RR), CIT** (2003) 262 ITR 275 (Bom.) and **Rathi and Co. v. UOI and others**, (2004) 267 ITR 295 (Gauhati).

We have considered the rival submissions and perused the decisions relied upon by the learned counsel for the parties.

Undoubtedly, order of transfer of assessment file of an assessee to a far off place puts the assessee in a great inconvenience and ought not to be ordered unless necessary in public interest to safeguard revenue by centralisation of cases for coordinated investigation. Such an order cannot be passed arbitrarily and can be justified only if there are valid reasons. Principles of natural justice as well as statutory provision require that the reasons must be recorded in writing in the order itself and disclosed to the assessee to enable the assessee to take its remedies against such an order. At the same time, the power conferred for transfer cannot be interfered with having regard to the object for which such power is conferred. The impugned order records the reason, that is need for centralization for effective and coordinated investigation. The nexus between the petitioner and the Baroda Company cannot be held to be non-existent. The decisions relied upon by the learned counsel for the revenue support the submission that if it was necessary for coordinated and effective investigation, transfer under section 127 of the Act could be justified. In the present case, there is nothing to show that there was any extraneous consideration or that reasons given were non-existent or irrelevant.

We, therefore, do not find any ground to interfere in exercise of writ jurisdiction.

The writ petition is dismissed.

(Adarsh Kumar Goel)
Judge

November 30, 2006 (Rajesh Bindal)
'gs' Judge